



FILE COPY

Office - Supreme Court, U. S.

FILLED

MAY 6 1940

CHARLES ELMORE GROPLEY  
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1939

NO. 681

~~RAILROAD COMMISSION OF TEXAS ET AL.~~

Petitioners

v.

ROWAN & NICHOLS OIL COMPANY

Respondent

## MEMORANDUM BRIEF FOR PETITIONERS

GERALD C. MANN

Attorney General of Texas

JAMES P. HART.

Assistant Attorney General

Austin, Texas

Attorneys for Petitioners

## INDEX OF AUTHORITIES

	Page
Alejandrino v. Quezon, 271 U. S. 528	4
Brownlow v. Schwartz, 261 U. S. 216	4
Daneiger Oil & Refining Co. v. Smith, 290 U. S. 599	5
Leonard v. Earle, 279 U. S. 392	4
McGrain v. Daugherty, 273 U. S. 135	4
Newport News Shipbuilding and Dry Dock Com- pany v. Schaufler, 303 U. S. 54	4
Norwegian Nitrogen Products Co. v. Tariff Com- mission, 274 U. S. 106	4
Panama Refining Co. v. Ryan, 293 U. S. 388	4
Railroad Commission of Texas v. MacMillan, 287 U. S. 576	4
Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, Section 250	4
Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, Section 263	5
Southern Pacific Company v. Interstate Commerce Commission, 219 U. S. 433	3
Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U. S. 498	3
United States v. Hamburg-Amerikanische Packet- Fahrt-Actien Gesellschaft, 239 U. S. 466	4
United States v. Rock Royal Co-operative, Inc., 307 U. S. 533	4
United States v. Trans-Missouri Freight Associa- tion, 166 U. S. 290	3

# Supreme Court of the United States

OCTOBER TERM, 1939

---

NO. 681

---

RAILROAD COMMISSION OF TEXAS ET AL.

Petitioners

v.

ROWAN & NICHOLS OIL COMPANY

Respondent

---

## MEMORANDUM BRIEF FOR PETITIONERS

Petitioners have already filed, on April 22, 1940, their reply brief, in which (on pages 1-9) they set out their reasons for believing that the case has not become moot because of the change in the proration orders of the Railroad Commission. This memorandum is intended to be supplementary to such reply brief.

Petitioners concede that there have been substantial changes in the proration orders of the Railroad Commission of Texas as applied to the East Texas field, beginning with the order of September 11, 1939. The total field allowable has been raised to about 690,000 barrels, as compared with about 522,000 barrels under the old orders. This has resulted in an increase in the "proratable" oil (that is, the oil

in excess of the 20-barrel per well base or minimum allowable and the allowable of the marginal wells) to about 176,000 barrels, as compared with only about 7,000 barrels of "proratable" oil under the old orders. Instead of being allocated purely on the basis of well potential as under the old orders, the "proratable" oil is now allocated on the factors of sand thickness, acreage and bottomhole pressure, in addition to well potential. The result in this change in the method of allocation has been that the leases in the fairway have received substantial increases in their allowables. As shown by the stipulation on file, the Rowan & Nichols Oil Company's lease under the new orders would be entitled to receive a daily allowable of about 205.44 barrels daily as compared with 111.83 barrels daily under the old orders.

In the following important respects, however, the new orders contain the same features as the old orders:

- (1) The 20-barrel base or minimum allowable per well is retained. This is the chief object of attack by the respondent.
- (2) The Commission in the new orders continues to refuse to prorate on a simple ratio of current reserves. It still insists that it is entitled to consider in allocating the allowable other factors, including the producing life of various portions of the field and the property rights of owners of wells drilled under the supervision of the Railroad Commission. The Railroad Commission still refuses to

concede that the respondent is entitled to measure its share in the common reservoir and in the daily allowable on the basis of "recoverable oil," which includes oil to be drained from other leases. (R. 308)

(3) Under the method of proration advocated by respondent and endorsed by the lower courts, the respondent has produced since the effective date of the order of September 11, 1939, approximately 290.8 barrels of oil daily, whereas under the present proration orders it would be entitled to produce only about 205.44 barrels daily. The respondent, although receiving a substantial increase in its daily allowable under the new orders, would not receive under such orders the proportion of the total daily field allowable which it has been receiving under the injunction.

Petitioners concede that the changes in the method of proration are substantial and that they were made by the Railroad Commission after hearing and in the belief that they are fair and reasonable. However, petitioners submit that, for the reasons set out on pages 6-9 of our reply brief, this case has not become moot.

*United States v. Trans-Missouri Freight Association*, 166 U. S. 290

*Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433

*Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U. S. 498

*McGrain v. Daugherty*, 273 U. S. 135

*Leonard v. Earle*, 279 U. S. 392

*Newport News Shipbuilding and Dry Dock Company v. Shauffler*, 303 U. S. 54

*United States v. Rock Royal Co-operative, Inc.*,  
307 U. S. 533

*Panama Refining Company v. Ryan*, 293 U. S.  
388

*Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States*, Section 263.

In the event that the court should decide that this case has become moot, we submit that the judgment should be reversed with directions to dismiss the complaint, without prejudice to the right of the Railroad Commission to promulgate and enforce similar proration orders in the future. Otherwise, the judgment of the Circuit Court of Appeals, modifying and affirming the judgment of the District Court, would be construed to constitute an adjudication against the right of the Railroad Commission to promulgate and enforce proration orders similar to those attacked in this case.

*United States v. Hamburg-Amerikanische Pack-  
et-Fahrt-Actien Gesellschaft*, 239 U. S. 466

*Brownlow v. Schwartz*, 261 U. S. 216

*Alejandrino v. Quezon*, 271 U. S. 528

*Norwegian Nitrogen Products Co. v. Tariff Commission*, 274 U. S. 106

*Railroad Commission of Texas v. MacMillan*,  
287 U. S. 576

*Danciger Oil & Refining Co. v. Smith*, 290 U. S.  
**599**

*Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, Section 250*

Respectfully submitted,

**GERALD C. MANN**  
Attorney General of Texas

---

**JAMES P. HART**  
Assistant Attorney General  
Austin, Texas  
Attorneys for Petitioners

## **ACKNOWLEDGMENT OF SERVICE**

Service of the foregoing memorandum brief for petitioners is acknowledged this \_\_\_\_\_ day of May, 1940.

---

Attorney for Respondent,  
Rowan & Nichols Company

STIPULATION

**FILE COPY**

Office - Supreme Court, U. S.

Filed

MAY 6 1940

CHARLES ELMORE CROPLEY  
CLERK

---

# Supreme Court of the United States

OCTOBER TERM, 1939

---

NO. 681

---

RAILROAD COMMISSION OF TEXAS ET AL.

Petitioners

v.

ROWAN & NICHOLS OIL COMPANY

Respondent

---

STIPULATION

## I N D E X

	Pages
Stipulation	1
Exhibit A—Proration Order of September 11, 1939	6
Exhibit B—Order Exempting Rowan & Nichols Todd "B" Lease, September 12, 1939	11
Exhibit C—Proration Order of April 25, 1940	13
Exhibit D—Shutdown Order of April 25, 1940	16

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

---

NO. 681

---

RAILROAD COMMISSION OF TEXAS, ET AL.,  
Petitioners  
VS.

ROWAN & NICHOLS OIL COMPANY,  
Respondent

---

## STIPULATION

---

The parties to the above entitled and numbered case stipulate as follows:

Following the entry of the final judgment of the District Court in this case on June 14, 1939 (R. 76) applications for increases in allowables were filed with the Railroad Commission of Texas by numerous operators. On August 4, 1939, the Railroad Commission of Texas issued notice that it would on August 16, 1939, hold a hearing with reference to whether or not there should be an increase in allowables and a change in the proration order for the East Texas field.

On July 26, 1939; Humble Oil & Refining Company filed its suit in the United States District Court for the Western District of Texas, Civil Action No. 31, *Humble Oil & Refining Company v. Railroad Commission of Texas et al.*, (now on appeal in this court as case No. 930, *Railroad Commission of Texas et al., appellants v. Humble Oil & Refining Company*), praying for interlocutory and final injunctive relief against the enforcement of the proration orders of the Railroad Commission, and particularly the order of June 19, 1939, which had been enforced to result in substantially the method of proration involved in this case. A hearing was held before a three-judge District Court at San Antonio, Texas, on August 10, 1939, and on August 11, 1939, the three-judge District Court issued a preliminary injunction enjoining the Railroad Commission from enforcing its proration orders against the properties of the Humble Oil & Refining Company, which then operated about 2,545 wells scattered throughout the East Texas oil field.

On August 15, 1939, the Railroad Commission of Texas issued an order shutting down completely the entire East Texas oil field for a period of fifteen days. On August 16, 1939, and for several days thereafter, the Railroad Commission held its hearing with reference to the application of Humble Oil & Refining Company for an increase in the allowables on its wells.

On September 11, 1939, the Railroad Commission of Texas adopted a proration order for the

-3-

East Texas oil field, raising the total field allowable to 690,000 barrels daily, and prorating the oil above the base or minimum allowable of 20 barrels per well on the factors shown in paragraph (b) 3 of Rule 23 of the order of September 11, 1939, a copy of which is attached hereto and marked "Exhibit A." (*Infra*, p. 6)

On September 12, 1939, the Railroad Commission issued an order exempting the Rowan & Nichols Oil Company's lease involved in this case from the enforcement of the proration order of September 11, 1939, a copy of said excepting order being attached hereto and marked "Exhibit B." (*Infra*, p. 11) The Railroad Commission of Texas has not enforced the order of September 11, 1939, or other orders continuing substantially the same method of proration, against the Rowan & Nichols Oil Company's said lease.

The method of proration for the East Texas oil field as set forth in the order of September 11, 1939, has been substantially continued by the Railroad Commission of Texas for each month thereafter, the latest order being the order of April 25, 1940, effective for the month of May, 1940, a copy of the portion of said order pertaining to the East Texas oil field being attached hereto and marked "Exhibit C." (*Infra*, p. 13)

At the same time that the Commission promulgated the above proration order it also promulgated an order requiring the shutdown of wells in the field

—4—

on certain days during the month of May, 1940; a copy of said order being attached hereto and marked "Exhibit D." (*Infra*, p. 16)

Under the proration order of September 11, 1939, and later orders continuing the same method of proration, the total daily field allowable of about 690,000 barrels of oil per day was divided on approximately the following basis: about 6,200 barrels daily were allocated to the approximately 530 wells which were incapable of producing as much as 20 barrels per day, and which were allowed to produce to their full capacity; about 509,000 barrels were allocated to the remaining wells in the field on the basis of 20 barrels per well per day, and about 176,000 barrels were allocated to such wells on the application of the factors set out in paragraph (b) 3 of Rule 23. (See "Exhibit A," *infra*, p. 10) of well potential, sand thickness, acreage, and bottomhole pressure.

Under the method of proration attacked by the Rowan & Nichols Oil Company in this case it was permitted to produce daily from the five wells on the lease involved in this case a total of 111.83 barrels per day. Under the judgment of the District Court, the Rowan & Nichols Oil Company has produced daily an amount of oil which is in the same proportion to the total daily field allowable as 220 barrels is to 522,000 barrels.

Up to the effective date of the order of September 11, 1939, the respondent produced oil at the rate

-5-

of about 220 barrels per day from its said lease. Since the effective date of the order of September 11, 1939, the Rowan & Nichols Oil Company has produced about 290.8 barrels of oil per day from its said lease. If the order of the Railroad Commission of Texas of September 11, 1939, and the renewals thereof had been enforced to control production from respondent's lease, respondent would have been allowed to produce about 205.44 barrels per producing day from its five wells on said lease, on producing days when the field was allowed to produce.

Since the entry of the judgment of the District Court on June 14, 1939, the respondent has produced under the court's injunction approximately 15,000 barrels of oil in excess of the amount of oil which it would have been permitted to produce under the proration orders of the Railroad Commission in effect since said date.

After the promulgation of the order of September 11, 1939, Rowan & Nichols Oil Company filed another suit, being Civil Action No. 46, entitled *Rowan & Nichols Oil Company v. Railroad Commission of Texas et al.*, in which Rowan & Nichols Oil Company attacked the method of proration established by the order of September 11, 1939, and renewals thereof, as applied to a different lease from the lease involved in this case. The grounds of attack were substantially the same as the grounds of attack on the method of proration in this case. Said Civil Action No. 46 was tried jointly with Civil

Action No. 31, entitled *Humble Oil & Refining Company v. Railroad Commission of Texas et al.*, (now on appeal in this court as case No. 930, *Railroad Commission of Texas, et al., Appellants, v. Humble Oil & Refining Company*), and the District Court has announced that it will enter judgment in Civil Action No. 46 in favor of Rowan & Nichols Oil Company. The defendants in said action intend to appeal from the judgment in said action to the Supreme Court of the United States.

This stipulation shall not be used by any party or admitted in evidence in any other suit or proceeding.

Dated this      day of                          , 1940.

Attorney for Petitioners

Attorneys for Respondent

“EXHIBIT A”

RAILROAD COMMISSION OF TEXAS  
OIL AND GAS DIVISION

IN RE: Conservation and  
Prevention of Waste of  
Crude Petroleum and Na-  
tural Gas in the State of  
Texas

Austin, Texas

September 11, 1939

OIL AND GAS DOC-  
KET NOS. 108, 120,  
123, 124, 125, 126,  
128, 129, 132 and 146

SPECIAL ORDER FIXING THE ALLOWABLE PRODUCTION OF CRUDE OIL IN THE EAST TEXAS FIELD FOR THE MONTHS OF SEPTEMBER AND OCTOBER, 1939, AND AMENDMENT TO RULE 23, DIVISION 3, OF THE COMMISSION'S ORDER OF OCTOBER 17, 1933, PERTAINING TO THE EAST TEXAS FIELD

WHEREAS, The Railroad Commission of Texas, after due notice and hearing on October 17, 1933, promulgated a general order pertaining to the conservation and regulation of crude oil and natural gas for the State of Texas, which included Rule 23 of Division 3, pertaining to the East Texas Field, which provided in part that each oil well in the East Texas Field should be allowed to produce daily a certain maximum percentage of its hourly potential capacity as determined by the Commission, and

WHEREAS, The Commission through subsequent amendments to Rule 23, of Division 3, of the Order of October 17, 1933, has continued to distribute the allowable for the East Texas Field between producing wells on the basis set forth in said Rule, and

WHEREAS, The method of allocation of the allowable production of the East Texas Field has been recently attacked in the Courts and the Commission has been restrained from enforcing the provisions of said Rule as it applies to certain properties in the East Texas Field, and

WHEREAS, The Commission finds that it is

necessary to revise the method of allocation and distribution of the allowable oil in the East Texas Field as has been enforced and applied and to amend Rule 23 of Division 3 of the Order of October 17, 1933, in order to conform to certain standards of distribution of the allowable crude oil production between the wells in the East Texas Field as indicated as being necessary by the Courts, and

WHEREAS, The Commission, after due notice, held a hearing in Austin, Texas, called for August 16, 1939, relating to the conservation of crude oil and natural gas in the East Texas Field and the prevention of the waste thereof, at which hearing the Commission heard extensive testimony on the proper factors which should be included in an equitable distribution of the allowable production between the producing wells in the East Texas Field and regulations necessary for the prevention of waste in said Field, and

WHEREAS, The Commission finds from the evidence submitted at its hearings that in order for each producing well to be allowed to produce its fair share of the allowable oil from the East Texas Field, that the method of allocation and distribution of the field's allowable between producing wells in this field should, in order to prevent waste, incorporate a minimum well allowable, the potential capacity of the wells on each lease, the number of acre feet of oil saturated sand underlying the wells on each tract and the bottom-hole pressure of the wells located on each tract, and

WHEREAS, The Commission finds from evidence submitted to it at numerous hearings, including the hearing of August 16, 1939, that the reservoir of the East Texas Field has its energy principally supplied by a hydrostatic drive which encroaches from the west to the east and that only a certain amount of crude oil can be withdrawn daily from the East Texas Field in order to utilize effectively the energy necessary to recover the greatest amount of oil ultimately from the reservoir, and

WHEREAS, The Commission finds that in order to prevent waste in said field that the allowable production during the months of September and October, 1939, should not average more than 490,000 barrels per day over a thirty (30) day period, and that not more than 690,000 barrels of crude oil should be produced from the East Texas Field in any one day during the months of September and October, 1939, and

WHEREAS, The Commission finds that there exists a market demand for crude oil produced in such an amount in the East Texas Field during the months of September and October, 1939:

IT IS THEREFORE ORDERED That Rule 23, of Division 3, of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read; effective September 14, 1939, as follows:

"RULE 23. (a) Not more than 690,000 bar-

rels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

“(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field.”

IT IS FURTHER ORDERED, By the Railroad Commission that the owner of any oil and/or gas leasehold estate in the East Texas Oil Field shall have the right to present evidence to the Commission

and be heard thereon on the question of the amount of acreage owned, the potential of his well or wells thereon, or the bottom-hole pressure or pressures of any well or wells on said leasehold estate, or the number of feet of saturated oil sand underlying any of said leases.

IT IS FURTHER ORDERED That this cause be held open on the docket for such other and further orders as may be necessary and supported by evidence of record.

**RAILROAD COMMISSION  
OF TEXAS**

Lon A. Smith, Chairman

Jerry Sadler, Commissioner

(SEAL)

ATTEST:

C. F. Petet, Secretary

**"EXHIBIT B"**

**RAILROAD COMMISSION OF TEXAS  
OIL AND GAS DIVISION**

OIL AND GAS  
DOCKET NO. 120  
No. 6-866

IN RE: Conservation and prevention of waste of crude petroleum and natural gas in the East Texas Field  
Austin, Texas  
September 12, 1939

ORDER FIXING THE PORTION OF THE TOTAL ALLOWABLE FOR THE EAST TEXAS FIELD WHICH THE ROWAN AND NICHOLS OIL COMPANY WILL BE ALLOWED TO PRODUCE FROM ITS TODD "B" LEASE, GREGG COUNTY, TEXAS

WHEREAS, In Cause No. 624 in Equity in the District Court of the United States for the Western District of Texas, Austin Division, entitled *Rowan and Nichols Oil Company, Complainant v. Railroad Commission of Texas, et al.*, Respondents, the said court on June 14, 1939, entered its decree containing the following provision, to wit:

"Respondents, their agents, servants, employees and representatives are restrained from interfering with complainant in daily producing from the wells on its said lease, except on such days as the entire East Texas Oil Field may be, by valid order of the Railroad Commission, prohibited from producing, that amount of oil which bears to the daily field allowable fixed by the Railroad Commission the ratio which 220 barrels bears to 522,000 barrels":

WHEREAS, The Railroad Commission of Texas and the other respondents in the above entitled and numbered cause have taken an appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, in which said appeal said respondents are praying that said decree be set aside or modified.

IT IS HEREBY ORDERED By the Railroad

Commission of Texas that Rowan and Nichols Oil Company shall be allowed to produce from its said Todd "B" Lease, in the W. H. Castleberry Survey, Gregg County, Texas, that proportion of the total allowable for the East Texas Field which is fixed by said decree of the District Court of the United States for the Western District of Texas, as hereinbefore set forth; until such time as said decree shall be set aside or modified by a court of competent jurisdiction, and tenders shall be issued for such oil so produced pending the reversal or modification of said decree.

**RAILROAD COMMISSION  
OF TEXAS**

Lon A. Smith, Chairman  
Jerry Sadler, Commissioner

(SEAL)

ATTEST:

C. F. Petet, Secretary

**"EXHIBIT C"**

**RAILROAD COMMISSION OF TEXAS  
OIL AND GAS DIVISION**

OIL AND GAS  
DOCKET NOS.  
108, 120, 123, 124,  
125, ~~126~~, 128, 129,  
132 and 146  
No. 20-1508

IN RE: Conservation and  
prevention of waste of crude  
petroleum and natural gas  
in the state of Texas  
Austin, Texas  
April 25, 1940

SPECIAL ORDER FIXING THE ALLOWABLE  
PRODUCTION OF CRUDE OIL IN THE  
VARIOUS FIELDS AND DISTRICTS  
IN TEXAS

RULE 23 of Division 3, as contained in an Order of the Commission dated October 17, 1933, pertaining to the EAST TEXAS FIELD as amended by an Order of the Commission dated September 11, 1939, is hereby readopted and amended as follows:

WHEREAS, The Commission finds that in order to prevent waste in said field that the allowable production during the month of May, 1940, should not average more than 400,000 barrels per day over the thirty (30) day period, and that no more than 690,000 barrels of crude oil should be produced from the East Texas Field in any one day during the month of May, 1940, and

WHEREAS, The Commission finds that there exists a market demand for crude oil, produced in such an amount in the East Texas Field during the month of April, 1940.

IT IS THEREFORE ORDERED That Rule 23, of Division 3 of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read, effective May 1, 1940, as follows:

"RULE 23. (a) Not more than 690,000 barrels

of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.
2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.
3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

\* \* \*

IT IS FURTHER ORDERED That this Cause be

held open on the Docket for such further orders as may be necessary and supported by evidence of record.

RAILROAD COMMISSION  
OF TEXAS

Lon A. Smith, Chairman

Ernest O. Thompson

Jerry Sadler, Commissioners

(SEAL)

ATTEST:

C. F. Petet, Secretary

"EXHIBIT D"

RAILROAD COMMISSION OF TEXAS  
OIL AND GAS DIVISION

OIL AND GAS  
DOCKET NO. 120  
NO. 6-1507

IN RE: Conservation and prevention of waste of crude petroleum and natural gas in the East Texas Field  
Austin, Texas  
April 25, 1940

SPECIAL ORDER SHUTTING DOWN THE  
EAST TEXAS FIELD COVERING RUSK,

SMITH, GREGG, CHEROKEE AND  
UPSHÉR COUNTIES, TEXAS

WHEREAS, After due notice hearings have been held in Austin, Texas, at various times including a hearing on April 18, 1940, with respect to the existence and imminence of waste of oil and gas in the state of Texas and the prevention thereof, and

WHEREAS, On April 25, 1940, the Commission issued a "Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas," and

WHEREAS, Under said Order of the Commission the maximum quantity of oil which is permitted to be produced from the East Texas Field was set at 690,000 barrels per day, and

WHEREAS, The Commission finds that in order to maintain the bottom-hole pressure in the East Texas Field and in order to prevent waste, it is necessary that all wells in the East Texas Field be closed in for a total of fourteen (14) days during the month of May, 1940:

THEREFORE IT IS ORDERED That each and every well in the East Texas Field shall be shut in on the following days: May 1, 4, 5, 8, 11, 12, 15, 18, 19, 22, 25, 26, 29, and 31, 1940.

IT IS FURTHER ORDERED That no exceptions to this order will be granted except when justified by evidence presented to the Commission to the effect that, because of reservoir conditions, continuous production should be maintained to prevent physical waste, in which case, the total allowable of the well or wells so excepted shall be reduced during the period covered by this order an amount equivalent to fourteen (14) days' allowable during the month of May, 1940.

**IT IS FURTHER ORDERED** That the natural gasoline extraction plants be and are hereby given authority to advise the operators of the oil wells connected to their gathering systems that it will be agreeable for those operators of oil wells to produce their allowable oil on each of the days covered by this shut-down order with the understanding, however, that operators of oil wells so producing restrict the production a total of fourteen (14) days during the month of May, 1940.

**IT IS FURTHER ORDERED** That this order shall not apply to those wells in the East Texas Field which the Commission has found to be marginal wells and shown to be such on the Commission's current proration schedule now in force and effect in the East Texas Field.

**IT IS FURTHER ORDERED** That this Cause be held open on the Docket for such other and further orders as may be necessary and supported by evidence of record.

**RAILROAD COMMISSION  
OF TEXAS**

Lon A. Smith, Chairman  
Ernest O. Thompson  
Jerry Sadler, Commissioners

(SEAL)

ATTEST:

C. F. Petet, Secretary